



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 20 1994

REPLY TO THE ATTENTION OF:

H-7J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Bobick, Inc.  
(formerly Orbitron Industries, Inc.)  
4101 Edision Lakes Parkway, Suite 160  
Mishawaka, Indiana 46545

Re: Orbitron Site  
901 South Main Street  
Delphos, Allen County, Ohio

Dear Sir or Madam:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Michael Anastasio, Assistant Regional Counsel, at (312) 886-7951, or Steve Renninger, On-Scene Coordinator, at (216) 522-7260.

Sincerely yours,

  
William E. Muno, Director  
Waste Management Division

Enclosure

cc: J. Carlson, OEPA

cc: Janice A. Carlson  
Acting Chief  
Division of Emergency & Remedial Response  
Ohio Environmental Protection Agency  
1800 WaterMark Drive  
Columbus, Ohio 43266-0149

bcc: Docket Analyst, ORC (CS-29A)  
Mike Anastasio, ORC (CS-29A)  
Steve Renninger (OSC), (SEDO)  
Debora Dawley (ESS), (HSES-5J)  
File copy  
Jose Cisneros, ESS (HSES-5J)  
Mary Ellen Ryan, SFAS (MF-10J)  
Oliver Warnsley, CRS (HSM-5J)  
EERB Site File  
EERB Read File  
Toni Lesser, Public Affairs (P-19J) w/out attachments  
Don Henne, Department of Interior

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
Orbitron Site )  
901 South Main Street )  
Delphos, Allen County, )  
Ohio )

Respondent: )

Bobick, Inc. (formerly )  
Orbitron Industries, Inc.))

Docket No. **V-W- '94-C-250**

ADMINISTRATIVE ORDER BY  
CONSENT PURSUANT TO  
Section 106 OF THE  
COMPREHENSIVE  
ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND  
LIABILITY ACT OF 1980,  
as amended, 42 U.S.C.  
§ 9606(a)

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is entered voluntarily by the United States Environmental Protection Agency ("USEPA") and Bobick, Inc. (formerly Orbitron Industries, Inc.) (the "Respondent"). The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the USEPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by USEPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at 901 South Main Street, Delphos, Allen County, Ohio (the "Orbitron Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Ohio, which has been notified of the issuance of this order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondent's participation in this Order shall not constitute an admission of liability or of USEPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by

the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon USEPA, and upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order. Respondent is jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondent shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, USEPA hereby finds that:

1. The Orbitron Site (the "Orbitron Site" the "Site" or "the Facility") is an abandoned plastics manufacturing/molding facility located at 901 South Main Street in Delphos, Allen County, Ohio. The area is zoned for industrial use. It is approximately 7 acres in size. Residential areas are situated nearby.
2. The Respondent has been and is an owner and/or operator of the Site.
3. On June 2, 1994, Ohio EPA ("OEPA") responded to a drum spill at the Facility. OEPA inspectors observed approximately 125 drums on-site, both indoors and outdoors. OEPA and the Delphos Fire Department documented one or more abandoned leaking drums with released/spilled material which migrated across a gravel driveway and soaked into the ground. The Delphos Fire Department attempted to stabilize the drums with an earthen dike. OEPA observed numerous other abandoned drums at the Site labelled as hazardous waste. Interdyne, an Orbitron contractor, overpacked the three drums from which the release occurred.
4. On July 5, 1994, OEPA issued a Notice of Violation to Orbitron setting forth the determination that Orbitron was in violation of state hazardous waste regulations and ordering Orbitron to conduct detailed analytical tests on substances present at the Site and mitigate the threat to human health and the environment posed by open drums at the Site.

5. On July 13, 1994, USEPA received a report from Orbitron that 54 abandoned drums remained on-site and that some of the drums contained water-soluble paint and vinyl coating.

6. On July 15, 1994, Mr. Tom Cooper voluntarily granted USEPA access to the Site to conduct an investigation, collect samples and assess the threat posed by the Site. Pursuant to the July 15, 1994 grant of access, on July 19, 1994, USEPA, with its Technical Assistance Team, conducted the site investigation in the presence of Yocum Realty and Cousins Environmental Services. During the July 19, 1994 site investigation, USEPA observed and documented the presence of approximately 207 abandoned drums and containers in four areas throughout the Site, including: the pole barn area, the oil storage building area, the main building area, and the loading dock area. Many drums were open and/or leaking at the time of inspection. Access to the Site as well as these areas was unrestricted. USEPA observed children playing within 75 feet of the abandoned drum areas.

7. During the July 19, 1994 investigation, USEPA observed and documented, inter alia, the following at the Site: the presence of ignitable and corrosive wastestreams in abandoned drums, some of which were open and/or leaking; analytical results indicating the presence of RCRA characteristic wastes, including 5 ignitable wastestreams with documented flashpoints as low as 70 degrees Fahrenheit (70 °F) (flashpoints of samples taken from abandoned drums at the Site were 70°F (2 drums), 93°F, 95°F, and 103°F), and 1 corrosive wastestream with a pH of 2.08, in abandoned drums; the presence of hazardous substances (i.e., xylene) abandoned drums; many abandoned drums marked hazardous and many abandoned drums labelled as containing Methyl Ethyl Ketone ("MEK").

8. Access to the Site is unrestricted and children have been observed playing within approximately 75 feet of abandoned drums. Accordingly, nearby residents and passers-by, including children, are at risk of direct exposure to the substances present at the Site. In addition, evidence of vandalism (e.g., kicked-in doors) has been observed. Furthermore, if an explosion occurs, contaminants could become airborne and very well affect the nearby population.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, USEPA has determined that:

1. The Orbitron Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Xylene is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. The Respondent is the present "owner" and/or "operator" of the Orbitron Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). The Respondent is either a person who at the time of disposal of any hazardous substances owned or operated the Orbitron Site, or who arranged for disposal or transport for disposal of hazardous substances at the Orbitron Site. Respondent therefore are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

- a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

The Orbitron site is unsecured and subject to unauthorized access. Residential areas are situated nearby and children have been observed playing within 75 feet of the abandoned drums. Considering the unrestricted access to the open and/or deteriorated hazardous substances (i.e., xylene), corrosive, ignitable, and oxidizer drums and containers on site, the potential for direct exposure to human and animal populations exists. During the July 19, 1994, U.S. EPA site investigation, drums were documented to contain corrosive (Ph=2.08), ignitable (xylene, flash point < 70 degree F), and oxidizer wastes as well as hazardous substances (e.g., xylene). Many drums were open or deteriorated due to weather conditions or vandalism. Also, the site has a history of trespassing and vandalism.

- b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

During the July 19, 1994, U.S. EPA site investigation, the OSC observed abandoned drums containing corrosive, ignitable, and oxidizer waste streams as well as hazardous substances (i.e., xylene) to be open and in varying stages of deterioration, some having spilled contents creating incompatible situations including acids/caustics. During the July 19, 1994, site

investigation, the OSC observed open drums containing xylene and waste solvents adjacent to broken and suspected vandalized doors of the oil/solvent storage building. The OSC observed ignitable drums staged in an outdoor pole barn to be deteriorated and bulging, posing a threat of release. Many drums were marked hazardous and others "used solvent" and "MEK".

- c. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

Northcentral Ohio typically has a substantial rainfall in the spring and autumn; summer temperatures are often above 90 degrees F. Continuing heavy precipitation and extreme temperatures would continue deterioration of the drums and containers. During the July 19, 1994, U.S. EPA site investigation, the OSC noted that weather conditions have affected the integrity of the drums to date. Many of the drums were open, rusted, or bulging due to extreme weather conditions. Drum and container samples obtained by TAT during the July 19, 1994, site investigations documented contents as ignitable wastes, including xylene, with a flash point of < 70 degrees F.

- d. Threat of fire or explosion;

The Orbitron Site contains approximately 207 abandoned surficial drums and containers. Drum and container samples obtained by TAT during the July 19, 1994, site investigation documented contents as ignitable wastes, including xylene, with a flash point of < 70 degrees F. Therefore, the potential for an explosion exists, and if such an event occurs, contaminants could become airborne and may affect the nearby population.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

#### **V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal actions required by this Order themselves or retain (a) contractor(s) to implement the removal actions. Respondent shall notify USEPA of Respondent's qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 5 business days of the effective date of this Order. Respondent shall also notify USEPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. USEPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If USEPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following USEPA's disapproval and shall notify USEPA of that contractor's name and qualifications within 3 business days of USEPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to USEPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. USEPA retains the right to disapprove of any Project Coordinator named by the Respondent. If USEPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following USEPA's disapproval and shall notify USEPA of that person's name and qualifications within 4 business days of USEPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from USEPA relating to this Order shall constitute receipt by Respondent.

The USEPA has designated Steve Renninger of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at U.S. Environmental Protection Agency, Region 5, Eastern District Office, 25089 Center Ridge Road, Mail Code SE-W, Westlake, OH 44145, phone (216) 522-7260, fax (216) 522-2295. Respondent is encouraged to make their submissions to USEPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

USEPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. USEPA shall notify the Respondent, and Respondent shall notify USEPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall



be promptly followed by a written notice.

## 2. Work to Be Performed

Respondent shall perform, at a minimum, the following removal actions:

- a. Develop and implement a site health and safety plan.
- b. Establish site security. Restrict access to drum storage areas.
- c. Properly stabilize, stage, inventory, identify, sample, characterize, remove, treat and dispose of (off-site) all drums, containers, tanks, transformers, and associated contents, and associated contaminated soil, including all hazardous substances, pollutants, and contaminants, and all other hazardous substances, which are present at the Site.

### 2.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to USEPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

USEPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If USEPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 business days of receipt of USEPA's notification of required revisions. Respondent shall implement the Work Plan as finally approved in writing by USEPA in accordance with the schedule approved by USEPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify USEPA at least 48 hours prior to performing any on-site work pursuant to the USEPA approved work plan.

Respondent shall not commence or undertake any removal actions at the Site without prior USEPA approval.

### 2.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit for USEPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If USEPA determines it is appropriate, the plan shall also include

contingency planning. Respondent shall incorporate all changes to the plan recommended by USEPA, and implement the plan during the pendency of the removal action.

### 2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to USEPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with USEPA guidance.

Upon request by USEPA, Respondent shall have such a laboratory analyze samples submitted by USEPA for quality assurance monitoring. Respondent shall provide to USEPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by USEPA, Respondent shall allow USEPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify USEPA not less than 3 business days in advance of any sample collection activity. USEPA shall have the right to take any additional samples that it deems necessary.

### 2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, Respondent shall submit a proposal for post-removal site control, consistent with Section 300.415(k) of the NCP, 40 CFR § 300.415(k), and OSWER Directive 9360.2-02. Upon USEPA approval, Respondent shall implement such controls and shall provide USEPA with documentation of all post-removal site control arrangements.

### 2.5 Reporting

Respondent shall submit a monthly written progress report to USEPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of USEPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or

anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to USEPA and the State. The notice to USEPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

## 2.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for USEPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

## 3. Access to Property and Information

Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to USEPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which USEPA determines to be necessary. Respondent shall submit to USEPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use their best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify USEPA if, after using their best efforts, they are unable to obtain such agreements. Respondent shall describe in writing their efforts to obtain access. USEPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as USEPA deems appropriate. Respondent shall reimburse USEPA for all costs and attorneys fees incurred by the United States in obtaining such access.

#### 4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify USEPA that such documents and information are available to USEPA for inspection, and upon request, shall provide the originals or copies of such documents and information to USEPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of USEPA.

#### 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by USEPA, with the USEPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

#### 6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by USEPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

## **7. Emergency Response and Notification of Releases**

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondent fails to respond, USEPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to USEPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

## **VI. AUTHORITY OF THE USEPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by USEPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **VII. REIMBURSEMENT OF COSTS**

Respondent shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. As soon as practicable after the effective date of this Order, USEPA will send Respondent a bill for "past response costs" at the Site. USEPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to the date through which the Itemized Cost Summary runs".

In addition, USEPA will send Respondent a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the

United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC. "Oversight costs" shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between the date through which the USEPA's Itemized Cost Summary for "past response costs" ran" and the effective date of this AOC.

Respondent shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Waste Management Division, USEPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Orbitron Site" and shall reference the payor's name and address, the USEPA site identification number XQ, and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that USEPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the

dispute is resolved.

#### **VIII. DISPUTE RESOLUTION**

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any USEPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify USEPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. USEPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by USEPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of USEPA.

An administrative record of any dispute under this Section shall be maintained by USEPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Waste Management Division, USEPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with USEPA's decision, whichever occurs.

#### **IX. FORCE MAJEURE**

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify USEPA orally within 24 hours after Respondent become aware of any event that Respondent's contend constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for USEPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If USEPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by USEPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

\$100.00 per day for the first 3 days, \$1,000.00 per day for the next 7 days, and \$3,000.00 per day thereafter.

Upon receipt of written demand by USEPA, Respondent shall make payment to USEPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether USEPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires.

Violation of any provision of this Order may subject Respondent to



civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, USEPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of USEPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent USEPA from seeking legal or equitable relief to enforce the terms of this Order. USEPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

## **XII. OTHER CLAIMS**

By issuance of this Order, the United States and USEPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or USEPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out

of any action performed under this Order.

No action or decision by USEPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### **XIII. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Order, upon issuance of the USEPA notice referred to in Section XVII (Notice of Completion), USEPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondent payment of the response costs specified in Section VIII of this Order, USEPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of past and future response costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by USEPA of the payments required by Section VII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

#### **XIV. CONTRIBUTION PROTECTION**

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### **XV. INDEMNIFICATION**

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this

Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by USEPA (not including oversight or approval of plans or activities of the Respondent).

#### **XVI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to USEPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by USEPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVII. NOTICE OF COMPLETION**

When USEPA determines, after USEPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), USEPA will provide notice to the Respondent. If USEPA determines that any removal activities have not been completed in accordance with this Order, USEPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the USEPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

#### **XVIII. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply

with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

**XIX. EFFECTIVE DATE**

This Order shall be effective upon signature by the Director, Waste Management Division, USEPA Region 5.

Title/Relation to Respondent \_\_\_\_\_ President

Signature \_\_\_\_\_

Name (print) \_\_\_\_\_ Thomas Cooper

Respondent Name \_\_\_\_\_ Bobbitt, Inc. (formerly O'Brien Inc.)

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

**EXHIBIT**

IT IS SO ORDERED AND AGREED

BY: \_\_\_\_\_

*Wm. E. Muno*  
William E. Muno, Director  
Waste Management Division  
United States  
Environmental Protection Agency  
Region 5

DATE: 9/20/94

ATTACHMENT A  
RESPONDENTS

Bobick, Inc. (formerly Orbitron Industries, Inc.)